

The Burger Court Opinion Writing Database

Arkansas v. Sanders

442 U.S. 753 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 9, 1979

PERSONAL

Re: 77-1497 - Arkansas v. Sanders

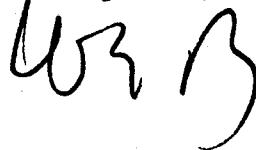
Dear Lewis:

I have been holding back in this case to see your response to the dissent. As I see it, the error of the dissent is treating this as an "automobile" case. It is not. Here, as was the case in Chadwick, probable cause to seize the case containing the contraband existed before the respondent ever set foot in the taxicab and before the case was placed in the trunk of the car. The fact that the case was being carried in an automobile at the time of the stop does not turn this into an "automobile" case for the police never had any reason to suspect the car itself as harboring the contraband. The probable cause that existed did not target the car itself as in any way as suspect. It was the hand carried suitcase that was the suspected locus of the contraband before it entered a "neutral" car. Here, as in Chadwick, the relationship between the car and the contraband for which the police were looking was purely coincidental. In light of the dissent, I think you need to drive the point home more forcefully than you do; I hope you will do so when you respond to the dissent. Your repeated references to the automobile (6 times) may mislead some into thinking you regard this as an "automobile" search case.

Like John, I think it might be a different case if the police had probable cause to suspect the car as the locus of contraband, as opposed to a particular suitcase hand carried. Though I am not sure we would want to reach any different result in such a case, I am inclined to agree with John's suggestion that we leave the proper result in a real "automobile" case open at this time.

I hope you will be willing to consider doing so.

Regards,



Mr. Justice Powell

77-1497
Jewell
Jewell is our copy "28" file
advise we circulate soon
will forward
Today WRB

NO
Response

I agreed
with much

Re: 77-1497 - Arkansas v. Sanders

MR. CHIEF JUSTICE BURGER, concurring in the judgment.

I concur in the Court's judgment but cannot join its ~~new~~ ¹⁷⁸ unnecessarily broad opinion, which seems to treat this case as if it involved the "automobile" exception to the warrant requirement. It is not such a case.

*May be
granted*
[Because the police officers had probable cause to believe that respondent's green suitcase contained marijuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear under United States v. Chadwick, 433 U.S. 1 (1977).] The essence of our holding in Chadwick is that a legitimate expectation of privacy exists in the contents of a trunk or suitcase accompanying or carried by a person. That expectation of privacy is not diminished

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: JUN 7 1979

Recirculated: _____

Re: 77-1497 - Arkansas v. Sanders

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE STEVENS joins, concurring in the judgment.

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To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Printed
1st DRAFT

Circulated:

JUN 12 1979

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner, }
v. } On Writ of Certiorari to the
Lonnie James Sanders. } Supreme Court of Arkansas.

[June —, 1979]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE STEVENS joins, concurring in the judgment.

I concur in the Court's judgment but cannot join its unnecessarily broad opinion, which seems to treat this case as if it involved the "automobile" exception to the warrant requirement. It is not such a case.

Because the police officers had probable cause to believe that respondent's green suitcase contained marihuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear under *United States v. Chadwick*, 433 U. S. 1 (1977). The essence of our holding in *Chadwick* is that a legitimate expectation of privacy exists in the contents of a trunk or suitcase accompanying or carried by a person. That expectation of privacy is not diminished by the fact that the owner's arrest occurs in a public place. Whether arrested in a hotel lobby, an airport, a railroad terminal, or on a public street as here, the owner has the right to expect that the contents of his luggage will not, without his consent, be exposed on demand of the police. If not carrying contraband, many persons arrested in such circumstances might choose to consent to a search of their luggage to obviate any delay in securing their release. But even if wholly innocent, some persons might well prefer not to have the contents of their luggage exposed in a public place. They may stand on their right to privacy and require a search warrant. The warrant requirement is not so onerous as to com-

CHANGES AS MARKED:

pp. 1-3

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

2nd DRAFT

Circulated:

JUN 14 1979

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner,
v.
Lonnie James Sanders. } On Writ of Certiorari to the
Supreme Court of Arkansas.

[June —, 1979]

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE STEVENS joins, concurring in the judgment.

I concur in the Court's judgment but cannot join its unnecessarily broad opinion, which seems to treat this case as if it involved the "automobile" exception to the warrant requirement. It is not such a case.

Because the police officers had probable cause to believe that respondent's green suitcase contained marihuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear under *United States v. Chadwick*, 433 U. S. 1 (1977). The essence of our holding in *Chadwick*, is that there is a legitimate expectation of privacy in the contents of a trunk or suitcase accompanying or being carried by a person; that expectation of privacy is not diminished simply because the owner's arrest occurs in a public place. Whether arrested in a hotel lobby, an airport, a railroad terminal, or on a public street as here, the owner has the right to expect that the contents of his luggage will not, without his consent, be exposed on demand of the police. If not carrying contraband, many persons arrested in such circumstances might choose to consent to a search of their luggage to obviate any delay in securing their release. But even if wholly innocent, some persons might well prefer not to have the contents of their luggage exposed in a public place. They may stand on their right to privacy and require a search warrant. The warrant requirement is not so onerous as to com-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 5, 1979

RE: No. 77-1497 Arkansas v. Sanders

Dear Lewis:

I think this is a very fine and helpful opinion and I am happy to join. I hope you will not adopt John's suggestion to narrow it. I do think, however, that Potter's suggestions are well taken.

Sincerely,



Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 4, 1979

Re: No. 77-1497, Arkansas v. Sanders

Dear Lewis,

Although I agree with your fine opinion and expect to join it, I would be happier if you could see your way clear to deleting the last sentence on page 7 and the last sentence of the run-over paragraph at the top of page 9.

The elimination of these sentences is not a condition of my joining your opinion. But, if you decide to keep them, perhaps you would be willing to somewhat modify their language.

In the last sentence on page 7, could "substantially dilutes" be changed to something like "may sometimes dilute"? And could the language in the sentence toward the top of page 9 be changed to read "luggage is a common repository for one's personal effects, and therefore, is inevitably associated with the expectation of privacy."?

I have just read a copy of John's letter to you, and would have no objection to narrowing the opinion along the lines he suggests, if you think it necessary or appropriate to do so.

Sincerely yours,

P.S.
P.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 9, 1979

Re: No. 77-1497, Arkansas v. Sanders

Dear Lewis,

I am glad to join your opinion for
the Court, as recirculated April 6.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

(one copy only)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

September 26, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 77-1497 — Arkansas v. Sanders

I have sent the attached dissent to
the printer.

Sincerely,

B.R.W.

D R A F TNo. 77-1497 — Arkansas v. Sanders

MR. JUSTICE WHITE, dissenting from denial
of certiorari.

This case presents the issue whether the Fourth Amendment prohibits an immediate warrantless search of an unlocked suitcase found in the trunk of a vehicle stopped by officers with probable cause to believe the suitcase contains contraband. The Supreme Court of Arkansas held that it does, finding that the expectation of privacy in a suitcase, even an unlocked one, is significantly greater than that simply in the automobile itself. Sanders v. State, 262 Ark. 595, 559 S.W.2d 704 (1977). Though a suitcase is easily moveable, the court held that that exigent circumstance was vitiated once the police had seized the suitcase and placed it within their exclusive control.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 9/27

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

STATE OF ARKANSAS *v.* LONNIE JAMES SANDERS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

No. 77-1497. Decided October —, 1978

MR. JUSTICE WHITE, dissenting.

This case presents the issue whether the Fourth Amendment prohibits an immediate warrantless search of an unlocked suitcase found in the trunk of a vehicle stopped by officers with probable cause to believe the suitcase contains contraband. The Supreme Court of Arkansas held that it does, finding that the expectation of privacy in a suitcase, even an unlocked one, is significantly greater than that simply in the automobile itself. *Sanders v. State*, 262 Ark. 595, 559 S. W. 2d 704 (1977). Though a suitcase is easily moveable, the court held that that exigent circumstance was vitiated once the police had seized the suitcase and placed it within their exclusive control.

In reaching its conclusion, the court below relied in part on our decision in *United States v. Chadwick*, 433 U. S. 1 (1977), though that case involved a locked footlocker and no contention, in this Court, that the automobile search exception was applicable. Since *Chadwick*, the federal courts of appeals have reached conflicting decisions on whether immediate warrantless searches of luggage found in an automobile are permissible as falling within the scope of a warrantless vehicle search. Compare *United States v. Stevie*, No. 77-1335 (CA8 en banc Aug. 15, 1978) (finding the search unlawful under *Chadwick*), with *United States v. Finnegan*, 568 F. 2d 637 (CA9 1977) (upholding the search). See also *United States v. Montgomery*, 558 F. 2d 311 (CA5 *per curiam*) (on petition for rehearing) (reserving the issue). Prior to *Chadwick*, the federal courts had uniformly held that once a vehicle is subject to a lawful warrantless search suitcases inside the vehicle

*It was,
however,
dismissed*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 6, 1979

Re: 77-1497 - Arkansas v. Sanders

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell
Copies to the Conference
cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1979

Re: 77-1497 - State of Arkansas v. Sanders

Dear Lewis:

Please join me in your opinion as is.

Sincerely,

JM
T.M.

Mr. Justice Powell

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice R. Huquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____
1st DRAFT Recirculated: SEP 27 1978

SUPREME COURT OF THE UNITED STATES

STATE OF ARKANSAS *v.* LONNIE JAMES SANDERS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

No. 77-1497. Decided October —, 1978

MR. JUSTICE BLACKMUN, dissenting.

This case is illustrative of the difficulties and the confusion that *United States v. Chadwick*, 433 U. S. 1 (1977), has spawned. If the Court's decision in *Chadwick* is correct (a proposition I seriously doubt, for I was in dissent there, *id.*, at 17), the Court, instead of being reluctant, ought forthwith to assume the task of clarifying the resulting confusion.

Law enforcement authorities, the accused, and courts alike deserve to know and to be advised as to what, if anything, is required before a container—locked or unlocked, box, handbag, briefcase, envelope, pouch, or luggage—present in an automobile may be seized or examined when there is probable cause to believe it contains a controlled substance or other contraband. If there remains any automobile exception after *Chadwick*, as the Court professed, *id.*, at 12, its boundaries should be established now. I therefore agree with MR. JUSTICE WHITE that the Court should grant certiorari in this case, and I dissent from its refusal to do so.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 19 APR 1979

Recirculated: _____

No. 77-1497 - Arkansas v. Sanders

MR. JUSTICE BLACKMUN, dissenting.

This case illustrates the difficulties and confusion that United States v. Chadwick, 433 U.S. 1 (1977), has spawned and will continue to spawn. For reasons I stated in dissent in Chadwick, id., at 18-22 and 24, I continue to feel that that decision was wrong.

The Court today, in what may be a somewhat gratuitous approach (see Mr. Justice Stevens' concurrence, ante), goes farther down the Chadwick road, undermines the automobile exception, and, while purporting to clarify the

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 20 APR 1979

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner,
v.
Lonnie James Sanders. } On Writ of Certiorari to the
Supreme Court of Arkansas.

[April —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

This case illustrates the difficulties and confusion that *United States v. Chadwick*, 433 U. S. 1 (1977), has spawned and will continue to spawn. For reasons I stated in dissent in *Chadwick*, *id.*, at 18-22 and 24, I continue to feel that that decision was wrong.

The Court today, in what may be a somewhat gratuitous approach (see MR. JUSTICE STEVENS' concurrence, *ante*), goes farther down the *Chadwick* road, undermines the automobile exception, and, while purporting to clarify the confusion occasioned by *Chadwick*, creates, in my view, only greater difficulties for law enforcement officers, for prosecutors, for those suspected of criminal activity, and, of course, for the courts themselves. Still hanging in limbo, and probably soon to be litigated are the briefcase, the wallet, the package, the paper bag, and every other kind of container.

I am unpersuaded by the Court's casual statement, *ante*, at 9 n. 9, that *Chadwick* and this case are factually similar "in several critical respects." Even accepting *Chadwick* as good law, which I do not, this, for me, is a different case. In *Chadwick*, the defendants were arrested, and a 200-pound, double-locked footlocker was seized, as the locker was being loaded into the open trunk of a stationary automobile. The relationship between the footlocker and the vehicle was sufficiently attenuated that the Government chose not to argue in this Court that the automobile exception applied. 433 U. S.,

STYLISTIC CHANGES

4 P. 4

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

2nd DRAFT

Recirculated: 24 APR 1979

SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner, | On Writ of Certiorari to the
v. | Supreme Court of Arkansas.
Lonnie James Sanders. |

[April —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

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STYLISTIC CHANGES
& pp. 1, 2, and 3

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 13 JUN 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner, |
v. | On Writ of Certiorari to the
Lonnie James Sanders. | Supreme Court of Arkansas.

[April —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, dissenting.

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The Court today goes farther down the *Chadwick* road, undermines the automobile exception, and, while purporting to clarify the confusion occasioned by *Chadwick*, creates in my view, only greater difficulties for law-enforcement officers, for prosecutors, for those suspected of criminal activity, and, of course, for the courts themselves. Still hanging in limbo, and probably soon to be litigated are the briefcase, the wallet, the package, the paper bag, and every other kind of container.

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September 28, 1978

77-1497 State of Arkansas v. Sanders

Dear Chief:

I am persuaded by the dissents circulated by Byron and Harry that we should grant this case to resolve the conflict that already exists, and to try - difficult as it may be - to give guidance to law enforcement authorities who are confronted daily with automobile search questions.

Thus, I will change my vote to a grant. I believe this provides the fourth vote to take this case.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Powell
 4 APR 1979

Circulated:

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner,
 v.
 Lonnie James Sanders. | On Writ of Certiorari to the
 Supreme Court of Arkansas.

[April —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether, in the absence of exigent circumstances, police are required to obtain a warrant before searching luggage taken from an automobile properly stopped and searched for contraband. We took this case by writ of certiorari to the Supreme Court of Arkansas to resolve some apparent misunderstanding as to the application of our decision in *United States v. Chadwick*, 433 U. S. 1 (1977), to warrantless searches of luggage seized from automobiles.¹

I

On April 23, 1976, Officer David Isom of the Little Rock, Ark., Police Department received word from an informant that at 4:35 that afternoon respondent would arrive aboard an American Airlines flight at gate number one of the Municipal Airport of Little Rock, Ark. According to the informant, respondent would be carrying a green suitcase containing marihuana. Both Isom and the informant knew respondent well, as in January of 1976 the informant had given the Little Rock Police Department information that had led to respondent's arrest and conviction for possession of marihuana.

¹ Compare *United States v. Finnegan*, 568 F. 2d 637, 641-642 (CA9 1977), with *United States v. Stevie*, 582 F. 2d 1175, 1178-1179 (CA8 1978) (en banc).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 6, 1979

77-1497 Arkansas v. Sanders

Dear John:

Thank you for your note of April 4 about the above case. I have some reluctance to make the change you suggest, although I quite understand that it could be viewed as an acceptable alternative.

We took this case because of the apparent uncertainty as to the scope of Chadwick. I recall your suggestion at Conference, but I thought my mandate from a majority of the Justices - at least implicitly - was not to draw the distinction you suggest. If the police know that the contraband is in the automobile, but are not sure where, under our cases they may search the entire car except for closed luggage. If the contraband is not found in this search, the police certainly will have probable cause to obtain a warrant for search of the luggage.

Despite my preference for not identifying the distinction you suggest, I will, of course, abide by the wishes of a majority.

I am making language changes that I believe will meet Potter's suggestions in his note of April 4.

Sincerely,

Lewis

Mr. Justice Stevens

cc: The Conference

lfp/ss

~~LFP~~
Please join me in
your opinion as is
7/8/9/13

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

6 APR 1979

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner,
v.
Lonnie James Sanders. | On Writ of Certiorari to the
Supreme Court of Arkansas.

[April —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether, in the absence of exigent circumstances, police are required to obtain a warrant before searching luggage taken from an automobile properly stopped and searched for contraband. We took this case by writ of certiorari to the Supreme Court of Arkansas to resolve some apparent misunderstanding as to the application of our decision in *United States v. Chadwick*, 433 U. S. 1 (1977), to warrantless searches of luggage seized from automobiles.¹

I

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¹ Compare *United States v. Finnegan*, 568 F. 2d 637, 641-642 (CA9 1977), with *United States v. Stevie*, 582 F. 2d 1175, 1178-1179 (CA8 1978) (en banc).

May 11, 1979

77-1497 Arkansas v. Sanders

Dear Chief:

Thank you for your note of May 9 suggesting a possible modification of my opinion for the Court in this case.

Your suggestion is substantially the same as that made by John in his memorandum to me of April 4. You and he would prefer to limit the holding of the Court to situations in which the police have probable cause to believe that contraband is contained in a particular piece of luggage, thereby avoiding any discussion of "the automobile exception".

This certainly would be one way to write the case.

My understanding, however, was that we took this case with the hope of clarifying whether Chadwick applied to a piece of luggage in a moving automobile stopped on probable cause. The principal argument of the state of Arkansas was:

"The search here was clearly reasonable as being made under the automobile exception to the warrant requirement of the Fourth Amendment". Br. p. 6, 7, 16-31.

The oral argument, as I recall, also focused on the applicability of the automobile exception. And my recollection is that we discussed this case at Conference primarily in light of this argument.

I have thought that it would be helpful to make clear that luggage, with respect to which there is a high

expectation of privacy, is not subject to the automobile exception. As I have a Court for this view, I am naturally reluctant to undertake what would be viewed as a major change at this time.

Sincerely,

The Chief Justice

lfp/ss

question, he does not urge the Court to grant certiorari to decide the issue. June 20, 1979 officially concluded retroactive application of Chadwick to the Arkansas v. Sanders case. LFP

MEMORANDUM TO THE CONFERENCE

Cases held for Arkansas v. Sanders, No. 77-1497

Nine cases have been held for Arkansas v. Sanders: United States v. Stevie, No. 78-971; Robbins v. California, No. 78-567; DeMarco v. United States, No. 78-5712; Sink v. United States, No. 78-6058; DeSantis v. New York, No. 78-6076; Grim v. United States, No. 78-6088; Gaultney v. United States, No. 78-6098; Adams v. Illinois, No. 78-6283; and Guzman v. Louisiana, No. 78-6319.

1. United States v. Stevie, No. 78-971 (Cert to CA8) (CA8 cert. denied 6/20/79). In this case, the agents they discovered two suitcases and two cars in Arkansas. In effect, the facts in Stevie are almost identical to those in Arkansas v. Sanders. Acting on a tip, DEA agents observed as respondents retrieved two suitcases from the baggage claim area of an airport, entered an automobile, and drove away. Because of respondents' suspicious actions and the tip, the agents pulled the auto over and, upon smelling marijuana, took the suitcases from the trunk, searched them, and found marijuana. The Eighth Circuit, acting en banc, reversed respondents' convictions for possession of marijuana, relying on United States v. Chadwick, 433 U.S. 1 (1977).

The Government argues that this case is controlled by whatever this Court decides in Arkansas v. Sanders: Indeed, the Solicitor General specifically states that, "[i]f...the Court affirms the judgment of the Arkansas Supreme Court in Sanders, this petition should be denied." I will vote to follow the Solicitor General's suggestion and deny certiorari. Although the DEA agents did not receive information specifically concerning the suitcases, by the time of the search they had probable cause with respect to them. The situation posed by the Chief Justice in Sanders therefore is not presented here. Although the Solicitor General mentions in a footnote the issue of the retroactive application of Chadwick, and notes that there is a division among the circuits on the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

September 27, 1978

Re: No. 77-1497 Arkansas v. Sanders

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
WILLIAM H. REHNQUIST

September 28, 1978

Re: No. 77-1497 - Arkansas v. Sanders

Dear Harry:

I have already joined Byron's dissent from the denial of certiorari in this case, and would likewise join yours except for the fact that Lewis' note indicating that he now intends to vote to grant certiorari means that this case will turn out to be a "grant". I shall, therefore, await our next Conference, intending to stand by my vote to "grant" in this case.

Sincerely,

W

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1979

Re: No. 77-1497 Arkansas v. Sanders

Dear Harry:

Please join me in your dissent.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

77-1497 - Arkansas v. Sanders

From: Mr. Justice Stevens

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MR. JUSTICE STEVENS, concurring.

Occasionally an order denying certiorari does indicate that the Court has shirked its duty to resolve important and clear cut conflicts among the Circuits.^{1/} This, however, is not such a case because the asserted conflict is illusory.

In the only post-Chadwick^{2/} case relied upon by petitioner to establish the "conflict" with this, or any other case, the court held:

"[E]ven [if] Chadwick applies and requires a ruling that the search of the suitcase was unlawful, we would nevertheless be compelled to affirm [because] the admission into evidence of the fruits of the search was harmless beyond a reasonable doubt." United States v. Finnegan, 568 F.2d 637, 642 (CA9 1977).

^{1/} Compare Mansfield v. Estelle, No. 77-2517 (CA5 Feb. 9, 1978), cert. denied, No. 77-6709 (1978), with, e.g., United States v. Neff, 525 F.2d 361 (CA8 1975); compare United States v. Lacey, No. 77-1450 (CA2 March 31, 1978), cert. denied, No. 77-1751 (1978), with United States v. Seawell, 550 F.2d 1159 (CA9 1977).

^{2/} It is of course irrelevant that the result in this case conflicts with the result in other cases cited by petitioner that were decided before Chadwick clarified the law in this area. E.g., United States v. Soriano, 497 F.2d 147 (CA5 en banc 1974).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

September 28, 1978

Re: 77-1497 - Arkansas v. Sanders

Dear Chief:

If the four votes to grant certiorari in this case remain firm, I wonder if we should consider directing the parties to argue the question whether Chadwick is retroactive. You will note that this case involves a pre-Chadwick search. May we discuss this suggestion at our next Conference?

Respectfully,



The Chief Justice

Copies to the Conference

cert granted 11/16

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 4, 1979

RE: No. 77-1497 - Arkansas v. Sanders

Dear Lewis:

At Conference I believe I suggested that there may be a distinction between a case in which the police have probable cause to believe that a particular piece of luggage contains contraband and another case in which they merely have probable cause to believe that contraband is located somewhere in an automobile, possibly within a piece of luggage in the car. I also suggested that we should avoid deciding the latter case because it comes a good deal closer to the automobile exception.

As your opinion is presently written, I believe it decides both cases and therefore is somewhat broader than necessary in its holding. If the Court is disposed to accept your proposed disposition, I will write a short statement concurring in the result. On the other hand, if you are amenable to narrowing the holding, relatively minor changes would pick up my vote.

Respectfully,



Mr. Justice Powell

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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SUPREME COURT OF THE UNITED STATES

No. 77-1497

State of Arkansas, Petitioner,
v.
Lonnie James Sanders. } On Writ of Certiorari to the
Supreme Court of Arkansas.

[April —, 1979]

MR. JUSTICE STEVENS, concurring in the judgment.

Having improvidently granted certiorari, the Court now improvidently decides a question that is not presented by this case.

The question that is presented by the State's certiorari petition is frivolous. Because the police had probable cause to believe that respondent's green suitcase contained marihuana before it was placed in the trunk of the taxicab, their duty to obtain a warrant before opening it was clear. *United States v. Chadwick*, 433 U. S. 1. The State's attempt to distinguish *Chadwick* is properly rejected by the Court in a footnote. See n. 9, *ante*.

The question the Court chooses to decide is quite different from the one presented by petitioner: whether a warrant is necessary before opening luggage when the police have probable cause to believe contraband is located somewhere in a vehicle, but when they do *not* know whether, for example, it is inside a piece of luggage in the trunk, in the glove compartment, or concealed in some part of the car's structure. I am not sure whether that would be a stronger or weaker case for requiring a warrant before the luggage is opened, but I am sure that it would be better for the Court to have the question argued before deciding it.

Rather than joining the Court's advisory opinion, I concur in its judgment for the reasons stated by the Supreme Court of Arkansas.

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 7, 1979

Re: 77-1497 - Arkansas v. Sanders

Dear Lewis:

Since I will be joining the Chief's separate concurrence, I will withdraw my separate opinion.

Respectfully,



Mr. Justice Powell

Copies to the Conference